



Q&A

THE HUMAN RIGHTS ACT CAMPAIGN

1. WHAT IS THE HUMAN RIGHTS ACT?

The Human Rights Act (HRA) is a piece of national legislation which protects our human rights – effectively a UK Bill of Rights. It incorporates into UK law most of the rights in the European Convention on Human Rights, which was created following the Second World War to protect individuals from similar abuses happening again. In fact, British experts drafted most of the Convention and the UK was the first state to sign up to it in 1951.

The HRA requires all public authorities – central government, local councils, courts, schools, anyone responsible for carrying out a ‘public function’ – to think about human rights whenever they make decisions or write policy that affects our lives, and they must respect those rights.

The Act is designed to suit and support the UK democratic system. It is often attacked, rarely championed, and surrounded by myths and misconceptions, but the HRA is a positive piece of legislation for individuals and society generally.

2. HOW DOES THE HUMAN RIGHTS ACT WORK?

The HRA requires the UK government to explain how all proposed new laws are compatible with our human rights. It also means human rights must be taken into account by all public authorities when they are making decisions and developing policies. If someone feels a decision by a public authority breaches their rights, they can challenge that decision in a UK court. This makes the authority look at their decision again. In most cases, the authority comes to an agreement with the individual about how to protect their rights, without going to court. Sometimes this also leads to improved policies or

decisions which benefit entire communities or the country as a whole.

The HRA gives individuals the right to turn to UK courts and UK judges to challenge unlawful decisions made by the government and public authorities, rather than going all the way to the European Court of Human Rights.

3. WHY DO WE WANT TO KEEP THE HUMAN RIGHTS ACT?

Human rights are for everyone and the HRA protects those rights from abuse by the state in the UK. If you are lucky, you might never be aware of the protection the HRA gives you. That means it is doing its job and your rights have not been abused. But other people’s rights have been, and they have relied on the HRA, for example, to keep their families together or to get necessary disabled care. This key protection is being put at risk by negative press coverage of human rights and calls for the HRA to be scrapped.

The rights protected by the HRA are the least of what every member of our society is owed simply by being a human being. The European Convention on Human Rights protects just a handful of rights but they are fundamental ones, and it is the HRA which makes them legal entitlements. It is extremely worrying that people in power are proposing to cut back on our claim to any one of them.

We must stand up for human rights and protect the HRA which gives us the right to hold those in power to account – one of the pillars of our democratic society.

4. WHO DOES THE HUMAN RIGHTS ACT WORK FOR?

Everyone. Huge numbers of ordinary people in the UK rely on the HRA every year to make sure their rights are protected against the state. Not only does the HRA help in individual cases but those can lead to positive policy changes which may affect thousands of people.

For example, the HRA has been used to ensure: dignity for elderly people and others receiving care at home; support for a young girl with learning disabilities to get to and from school; improved procedures to prevent disabled individuals being overlooked by both social services and housing departments; protection for people who have been victims of trafficking; an end to blanket Do Not Resuscitate orders in hospitals.

Individuals have been able to use the Act to protect themselves in numerous ways, in and out of Court. Here are a couple of examples.

Keeping couples together: A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. After she cited their right to family life under the Act, the authority then agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Keeping families together: A woman left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Eventually, the woman was informed by social workers that the children would be removed from her because she was unable to provide stability and was having difficulty getting them to school. The woman challenged the decision citing her and the children's right to respect for private and family life, and the children's right to education. The department decided not to remove the children.

5. WHY AM I TOLD EUROPE IS DICTATING TO US?

There is a view that our human rights protections in the UK give 'Europe' the power to make us do things we do not want to. This is not true. The HRA allows people to seek justice in the UK courts. If the HRA was scrapped, UK citizens would still be protected by the European Convention on Human Rights but would have to apply to the European Court of Human Rights (ECtHR) to challenge a decision. Far from bringing power back to the UK, repealing the HRA would mean cases would be heard in Strasbourg, as they were before the HRA existed, instead of in UK courts.

It is true that Section 2 of the HRA says the UK courts have to 'take into account' relevant decisions from the ECtHR in Strasbourg. That is because the HRA incorporates the rights of the European Convention on Human Rights, and the ECtHR oversees the Convention. For the most part is not controversial – the ECtHR decides the meaning of the Convention rights, and as the HRA incorporates the Convention rights, their core meaning has to be the same in the UK as everywhere else. We need the same minimum standards even though each country will then adapt those to their own society.

To say 'Europe' is dictating to us is inaccurate because:

- The ECtHR rulings are nothing to do with the EU. The Convention is not an EU law – it is a regional treaty overseen by a regional court made up of independent judges from all member states, including the UK.
- Sometimes the UK courts will go further than the ECtHR and provide better protection.
- On rare occasions, with good reason, the UK will take into account but decide not to follow clear and consistent guidance from the ECtHR. This can sometimes lead to a positive dialogue with the ECtHR where the two Courts affect each other and improve each other's rulings.

6. SO IS THE ECTHR CONSTANTLY RULING AGAINST THE UK COURTS?

No. Here are some facts about cases that go to Strasbourg.

Only a tiny proportion of cases pending at the Strasbourg Court are against the UK

- Only 1.8 per cent of cases pending at the Strasbourg Court as of 1 January 2015 were against the UK. Most are against Italy, Ukraine, Russia and Turkey (over 60 per cent between them)

Of the cases which are brought against the UK, only a tiny number even get over the first hurdle and get looked at in detail

- The vast majority of cases lodged against the UK are ruled inadmissible or struck out, without the need for a full court judgment. In 2014, 1,997 cases were lodged against the UK, but 1,970 were declared inadmissible or struck out

When it does look at UK cases in detail, the Court does not always rule against the UK

- Of those cases brought against the UK which are admissible, Strasbourg often will find there has been no violation. In 2013, 19 full cases against the UK were considered, and only 11 decided against it.
- Overall, in 2012, only 0.6 per cent of cases lodged against the UK led to a judgment that there had been a violation, and just 1 per cent in 2011.

7. WHAT ABOUT EUROPE INTERFERING WITH UK GOVERNMENT DECISIONS?

A tiny minority of controversial cases are often quoted as proving that Europe is dictating to us and therefore the HRA must go. But the specifics of these cases are often misrepresented. Let's look at two examples: the deportation of the radical cleric Abu Qatada to face terrorism charges in Jordan, and denying UK prisoners the right to vote.

The case of Abu Qatada made many people feel uncomfortable. But human rights are for everyone, and that includes people we may not like. The ECtHR ruled that Qatada could not be deported to a country where he would not be able to receive a fair trial, where evidence obtained through torture could be used against him. The right to a fair trial and the absolute prohibition against torture are both long-standing British principles.

On the right of prisoners to vote, the ECtHR said that a blanket ban on all prisoners being able to vote was unfair and the UK parliament should revisit the policy. It is likely that parliament could avoid violating human rights law by qualifying the ban and allowing just certain categories of prisoner to vote, such as people convicted of driving offences or people in custody for less than a month. It is up to the UK parliament to decide what that should be.

Importantly, even without the HRA, it is likely that the outcome on prisoner voting rights and Abu Qatada would be the same. This is because as a signatory to the European Convention on Human Rights, the UK could still be challenged for violations of the European Convention itself in the ECtHR. The Convention requires signatory states to abide by any direct rulings against them from its guardian court, the ECtHR. Without that duty the Convention could become meaningless. With or without the HRA, the UK is bound by that obligation under international law. The only way the UK could ignore that duty and the ECtHR consistently with the rule of law would be to leave the European Convention altogether – an unprecedented regressive move for a democratic country.

The cases that make the news are the ones that the government has challenged (the majority of cases are resolved out of court or never reported). By definition these are likely to involve less clear-cut violations and/or particularly unpopular 'newsworthy' people or causes.

What we don't hear about are the many ordinary people who use the HRA in the UK, as well as the rest of us all nestling within its invisible protection – people who use it to make sure they are not separated from their children if they are fleeing an abusive relationship, people who use it to make sure elderly relatives are treated with dignity.

8. DOESN'T THE HUMAN RIGHTS ACT GIVE PEOPLE RIGHTS TO RIDICULOUS THINGS?

No. Bad press coverage has given us some untrue stories about what human rights protections entitle you to. For example, the HRA has never been used to force police to give criminal suspects KFC takeaways during a siege, or to give prisoners access to hard-core pornography in prison. These are not sensible interpretations of human rights law, and nothing the UK or Strasbourg courts have ruled would suggest that they are.

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